



BAIL SLIP

M.Narasingam, S/o.Manikkam Servai, Male, Aged 56 years was released on bail vide order of this Court dated 30.08.2016 made in CRL MP(MD).7529 of 2016 in CRL A(MD).No.307 of 2016.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 28.07.2021

ORDER PRONOUNCED : 29.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Crl.A. (MD) No.307 of 2016

Narasingam

... Appellant

vs.

The State represented by
The Deputy Superintendent of Police,
Melur Sub Division,
Madurai District,
(Y.Othakadai Police Station
Crime No.342 of 2005)

... Respondent

PRAYER:- This Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to call for the records pertaining to the judgment rendered by the learned III Additional District Sessions Judge, (PCR Act Cases), Madurai, Madurai District in Special S.C.No.214 of 2005 vide his judgment dated 27.07.2016 and set aside the same and consequently acquit the appellant honorably from the charge referred to in the said case.

For Appellant : Mr.R.Anand

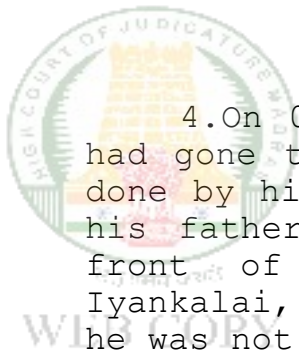
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is filed to set aside the judgment rendered by the learned 3rd Additional District Sessions Judge (PCR Act Cases), Madurai, in Spl.S.C.No.214 of 2005, dated 27.07.2016.

2.The case of the prosecution is briefly as follows:-

3.One Iyankalai, who belongs to SC/ST Community, is residing with his family consisting of his wife and daughter at Solampathi Village situated within the limits of Othakadai Police Station, Madurai District. The name of his father-in-law is Marutha @ Maruthai. One Narasingam, the accused herein was working as daily wager under Iyankalai.



4. On 08.04.2005 by 23.30 hours, Narasingam, the accused herein had gone to the residence of Iyankalai to seek wages for the work done by him. At that time, Iyankalai was not available at home and his father-in-law, Marutha @ Maruthai was talking with others in front of the house of Iyankalai. Narasingam/accused sought Iyankalai, for which, Marutha @ Maruthai/father-in-law replied that he was not at home and he had gone outside.

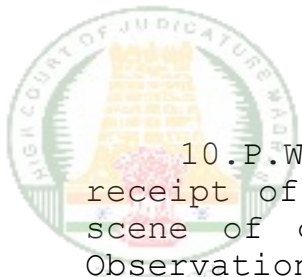
5. Further, the accused/Narasingam enquired Marutha @ Maruthai about the time of return of Iyankalai, to which, the father-in-law of Iyankalai, Marutha @ Maruthai is alleged to have not properly responded. He was ignoring the accused Narasingam and talking with his acquaintances, namely, Karuppayee, Azhaguraja, Sekar, Muthu and Chithra, which enraged the accused Narasingam to attack Iyankalai. Thereafter, the accused Narasingam took out a knife and stated that "with this you will be killed" and if his son-in-law, Iyankalai does not settle the wages by tomorrow morning, he too will be killed. Similarly so saying the accused Narasingam had stabbed Iyankalai's father-in-law, Marutha @ Maruthai on his stomach.

6. Unable to bear the pain, the father-in-law of Iyankalai, Marutha @ Maruthai cried for help. His daughter, Karuppayee, who was sleeping inside the house, hearing her father's cry, came out from the house and thereafter, she along with her acquaintance took the injured, Marutha @ Maruthai to the Government Rajaji Hospital, Madurai in an Auto Rickshaw.

7. The injured, Marutha @ Maruthai was admitted in Ward No.99. From the hospital, a message was sent to the outpost police within the compound of Government Rajaji Hospital, Madurai. From the outpost police, a message was sent to the jurisdictional Police, Othakadai Police Station regarding the occurrence.

8. On receipt of the information from the hospital, P.W12, Aaladiyan, Head Constable attached to the Othakadai Police Station went to the Government Rajaji Hospital, Madurai and examined the injured, Marutha @ Maruthai, who was undergoing treatment at Ward No.99 and recorded his statement and took an attested signature from his daughter, Karuppayee. Thereafter, P.W12, Aaladiyan came back to the police station and a case in Crime No.342 of 2005 had been registered on 09.04.2005 at around 04.30 hours.

9. P.W12, Aaladiyan had placed the original First Information Report, Ex.P10 and the original complaint, Ex.P1 before the learned 3rd Additional District Judge (PCR), Madurai. A copy of the First Information Report and a copy of the complaint was placed before P.W14, Deputy Superintendent of Police, Madurai and the receipt of the same has also been informed to his superior, Superintendent of Police, Madurai, whereby, the Superintendent of Police, Madurai, had appointed P.W14, Kannan as Investigation Officer to enquire the



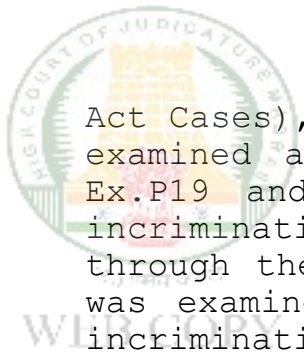
10.P.W14, Kannan, The Deputy Superintendent of Police, on receipt of the FIR, Ex.P.10 and the complaint, Ex.P1, went to the scene of occurrence and examined the witnesses and prepared the Observation Mahazar, Ex.P2 and Rough Sketch, Ex.P12. He went to the hospital and examined the injured, Marutha @ Maruthai and the Doctor, PW.13, Pounraj, who treated the injured in the Government Rajaji Hospital, Madurai and the Doctor, P.W13 had issued the Accident Register, Ex.P13. After completing the examination of the witnesses, P.W14, Kannan, the Deputy Superintendent of Police laid a final report before the Court of the learned Judicial Magistrate, Melur, Madurai.

11.On perusal of the final report filed by P.W14, Kannan under Section 173 (2) of Cr.P.C., the learned Judicial Magistrate, Melur, Madurai had taken cognizance of the offences under Sections 294(b), 307, 323, 324 and 341 of IPC and Section 3(1)(x) of SC/ST (PoA) Act. The final report laid by P.W14, the Deputy Superintendent of Police was numbered by the learned Judicial Magistrate, Melur, Madurai and thereafter, summons were issued to the accused.

12.On receipt of summons, the accused appeared before the Court of the learned Judicial Magistrate, Melur, Madurai. On such appearance, the accused was questioned regarding his economic status to engage a counsel on his own and was informed that if he is not able to engage a counsel, a counsel is to be appointed by the Legal Services Committee attached to this Bench on his side. The accused replied that he had engaged a counsel on his own. Thereafter, the case was committed to the Court of the learned Principal District and Sessions Judge, Madurai. The accused was bind over to the Court of the learned Principal District and Sessions Judge, Madurai.

13.On receipt of the final report from the Court of the learned Judicial Magistrate, Melur, Madurai, the learned Principal District and Sessions Judge, Madurai on appearance of the accused framed charges against the accused under Sections 294(b), 307, 323, 324 and 341 of IPC and Section 3(1)(x) of SC/ST (PoA) Act. The charges were readout and explained in Tamil to the accused. The accused pleaded not guilty and claimed to be tried. On receipt of the PRC case, the learned Principal District and Sessions Judge, Madurai on appearance of the accused had made over the case to the Court of the learned 3rd Additional District Sessions Judge (PCR Act Cases), Madurai. The accused was bind over to the Court of the learned 3rd Additional District Sessions Judge (PCR Act Cases), Madurai.

14.On appearance of the accused, the learned 3rd Additional District Sessions Judge (PCR Act Cases), Madurai after hearing the arguments on either side framed charges under Sections 294(b), 307, 323, 324 and 341 of IPC and Section 3(1)(x) of SC/ST (PoA) Act. The accused pleaded not guilty to the charges and claimed to be tried.



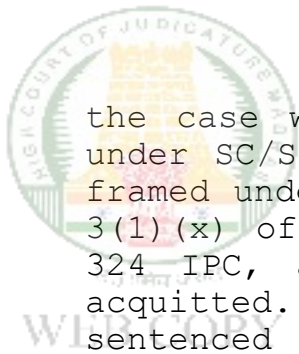
Act Cases), Madurai had fixed trial and in the trial, witnesses were examined as P.W1 to P.W14 and exhibits were marked as Ex.P1 to Ex.P19 and material objects were marked as M.01 and M.02. The incriminating portion of the evidences available in the Court through the witnesses, P.W1 to P.W14 was put to the accused and he was examined under Section 313 of Cr.P.C. The accused denied the incriminating evidences.

15.After hearing the evidences and the arguments on either side, the learned 3rd Additional District Sessions Judge (PCR Act Cases), Madurai on appreciation of the evidence and on consideration of the arguments had convicted the accused for the offence under Section 324 of IPC and acquitted the accused 294(b), 307, 323 and 341 of IPC and Section 3(1)(x) of SC/ST (PoA) Act. Under Section 324 of IPC, the accused was convicted and sentenced to undergo 1 year rigorous imprisonment with fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.

16.Aggrieved by the judgment of the learned 3rd Additional District Sessions Judge (PCR Act Cases), Madurai, the accused had preferred an appeal before this Court contenting that the learned 3rd Additional District Sessions Judge (PCR Act Cases), Madurai had not properly appreciated the evidence and had misdirected himself and came to a conclusion that the accused had committed an offence and therefore, the learned 3rd Additional District Sessions Judge (PCR Act Cases), Madurai had rejected the arguments of the learned counsel for the accused.

17.Mr.R.Anand, learned Counsel for the appellant had submitted his oral arguments. As per his submissions, the accused is alleged to have gone to the residence of one Iyankalai seeking money for the work done by him. At the time of his visit, the said Iyankalai was not available at home. The father-in-law of Iyankalai is available. The accused is alleged to have enquired about the whereabouts of Iyankalai with the father-in-law of Iyankalai. To this, the father-in-law of Iyankalai did not respond properly to the repeated request of the accused. Therefore, the conduct of the father-in-law of Iyankalai made the accused enraged. Because of this, there was altercation, in which, the accused is alleged to have inflicted injuries with the knife on the father-in-law of the Iyankalai. Hearing the commotion, the wife of Iyankalai, the daughter of the injured, came out of the house along with her daughter, grand daughter of injured. They took the injured to the Government Rajaji Hospital at Madurai by around 11.30 pm. From the hospital, message was sent to the police. Therefore, the police came to the hospital and examined the injured and recorded the statement. Based on which, FIR in Cr.No.342 of 2005, Y.Othakadai Police Station, was registered for the offence under Sections 294(b), 307, 323, 324 and 341 IPC r/w Section 3(1)(x) of SC/ST (POA) Act.

<https://hcservices.courts.gov.in/> 18. On 26/11/2016, the investigation and on filing of the final report,



the case was committed to the Court of the learned Special Judge under SC/ST Act and on appearance of the accused, the charges were framed under Sections 294(b), 307, 323, 324 and 341 IPC and Section 3(1)(x) of SC/ST (POA) Act. After due trial, except under Section 324 IPC, all other charges were not proved and the accused was acquitted. Under Section 324 IPC, the accused was convicted and sentenced to undergo one year rigorous imprisonment with fine of Rs.1,000/- in default, one month simple imprisonment.

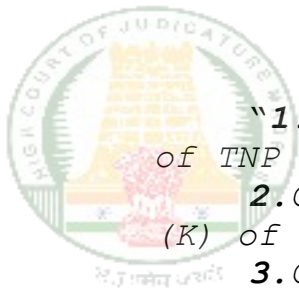
19.The learned Counsel for the appellant submitted that during trial, the so called injured person was not alive. His daughter was examined as PW-1. His grand daughter was examined as PW-2. The said Iyankalai was examined as PW-10. PW-3 to PW-5 are the alleged occurrence witnesses. They turned hostile during trial. PW-1 and PW-2 are the other witnesses. On assessment of the evidence, it can be safely concluded that they were not eye witnesses.

20.Mr.R.Anand, learned Counsel for the appellant invited the attention of this Court to the portion in the course examination, wherein, PW-1, Karuppayee, daughter of the injured and PW-2, Chitra, daughter of PW-1, grand daughter of injured, had stated that they were sleeping the house and on hearing the cries, they came out of the house and they took the injured to the hospital. When that be the case, they are not eye witnesses to the occurrence. The other witnesses, as per the charge sheet, are eye witnesses. They turned hostile. The learned Trial Judge failed to appreciate the evidence, as per the provisions of IPC and had misdirected himself and arrived at a conclusion that the prosecution had proved the case against the accused under Section 324 IPC and thereby convicted the accused.

21.In the alternative, the learned Counsel for the appellant seeks indulgence of this Court to consider the age of the accused. As on today, the age of the of the accused is 61 years. To consider to modify the sentence and in the alternative to offer compensation to the victim's family, the learned Government Advocate requested the Court to grant time, so that the SHO of the Police Station concerned may be directed to appear before this Court along with CD files regarding the antecedents of the accused.

22.In consideration pleadings of the learned counsel for the appellant, the SHO of the Police Station was directed to appear before this Court along with CD files regarding the antecedents of the accused on 28.07.2021. Today, 28.07.2021, when the case came up for hearing, Thiru.T.Senthilkumar, learned Government Advocate (Crl.Side) and one Thiru.Anantha Dandavam, SHO of the Othakadai Police Station, Madurai appeared before this Court in person along with report of the SHO regarding the antecedents of the accused/appellant.

23.As per the latest report of the SHO, the following cases <https://hservices.ehorte.gov.in/hservices> were registered against the appellant/accused.



- "1.Cr.No.198/2021 for the offence under Section 4(1) (a) of TNP Act.
2.Cr.No.1589/2020 for the offences under Section 4(1) (K) of TNP Act.
3.Cr.No.1435/2020 for the offences under Section 4(1) (a), 4(1) (I) of TNP Act.
4.Cr.No.579/2015 for the offence under Sections 294(b), 323, 324 and 506(ii) of IPC.
5.Cr.No.1750 /2020 for the offence under Sections 294 (b), 323, 324 and 506(ii) of IPC."

24.Further, it is submitted by the learned Government Advocate (Crl.Side) that the cases in Cr.Nos.1435 of 2020 and 198 of 2021 filed against the petitioner are not taken on file till date and the case in Cr.No.579 of 2015 is under investigation. He further submitted that the accused was convicted in Cr.No.1589 of 2020 and the case in Cr.No.1750 of 2020 registered against the appellant/accused was compromised between the parties amicably and accordingly, the same is closed.

25.The entire case records and the materials available before this Court were perused and the rival submissions of both side counsels were also considered.

26.On perusal of the records, it is found that the occurrence took place in the year 2005 and at the time of occurrence, the accused was aged about 45 years and now he is aged about 61 years. Considering the antecedents of the appellant/accused and the fact that the appellant/accused had attacked the injured on his Belly and also considering the nature of offence, this Court is not inclined to allow this Criminal Appeal.

27.Accordingly, this Criminal Appeal is partly allowed. The judgment of conviction recorded by the learned 3rd Additional District and Sessions Judge, (PCR Act Cases), Madurai in Spl.S.C.No.214 of 2005 dated 27.07.2016 is hereby confirmed but the sentence of imprisonment of one year and fine of Rs.1,000/- is modified as sentence of imprisonment already undergone and the fine of Rs.1,000/- is enhanced to Rs.10,000/-.

Sentence of imprisonment ordered by the learned trial Judge is modified accordingly.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



1.The 3rd Additional District Sessions Judge,
(PCR Act Cases),
Madurai,

2.The Deputy Superintendent of Police,
Melur Sub Division,
Madurai District,
(Y.Othakadai Police Station)

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

4. The Section Officer,Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

judgment made in
Crl.A. (MD) No.307 of 2016
29.07.2021

sgs (CO)
TR(06.08.2021) 7P 6C